IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11433 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HITESH ALIAS KALPESH HASMUKHBHAI KOLI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11433 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR HM PRACHCHHAK for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 20/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Surat City, on 21st of July, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 21st of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration the fact of registration of solitary crime registered against the petitioner on 9th of May, 2004 before Varachha Police Station under Section 66(1)B, 65 EA and 81 of the Bombay Prohibition Act whereby it was alleged that the petitioner was found in possession of 522 bottles of foreign liquor. After going through exhaustively and thoroughly the investigation papers in the said crime, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting the country liquor knowing fully well that the consumption of the country liquor is injurious to the public health. On account of the above material placed before him, the detaining authority came to the conclusion that the petitioner was a bootlegger and his antisocial activity which was required to be prevented forthwith. The detaining authority therefore passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Mr. Pandya for the petitioner and learned AGP HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was any material placed before the detaining authority to come to the conclusion that by the activity of the petitioner the public order was disturbed and public health was adversely affected. The facts of the present case are squarely covered by a decision of the Division Bench of this Court, in the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393, wherein the Division Bench of this Court after considering the decision of the Apex Court came to the conclusion that merely filing of criminal case under the Bombay Prohibition Act against the detenu would not lead to an inference that his

activities were prejudicial to the maintenance of public order and adversely affecting to the public health. A line has to be drawn between "breach of public order" and "breach of law and order". The registration of cases in this case, a solitary crime, against the petitioner, may be the breach of law and order, but that itself cannot be construed to be prejudicial to the maintenance of public order. The facts constituting the crime registered against the petitioner cannot be said to be the activity prejudicial to the public order. For the crime registered against the petitioner, he may be punished for such breach of law. To come to subjective satisfaction that by the activities of the petitioner, public order was disturbed, there must be some credible material before the detaining authority. In this case, in absence of such credible material before the detaining authority, the subjective satisfaction reached by the detaining authority cannot be said to be legal, valid and in accordance with law, so far as it relates to the breach of public order. In this view of the matter, order under challenge is required to be quashed and set aside.

5. In the result the petition is allowed. The order passed by Commissioner of Police, Surat City, on 21st of July, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Hitesh @ Kalpesh Hasmukhbhai Koli Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair